



March 13, 2002

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-1211

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160450.

The Travis County Transportation and Natural Resources Department (the "county") received a request for "the complete file concerning Gilbert Road." You inform us that some of the requested information is being released, but assert that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990).

Upon review of the information you seek to withhold under section 552.107(1), we conclude that most of it comes within the attorney-client privilege and is therefore excepted from disclosure under section 552.107(1). We have marked the information to be withheld. The remaining portion does not come within the attorney-client privilege and thus may not be withheld under section 552.107. Nor is this information protected under section 552.111, which excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." As section 552.111 generally protects only advice, opinion, and recommendations reflecting the policymaking processes of the governmental body, any protection under section 552.111 will usually be no

greater or less than the protection offered under section 552.107. *See* Open Records Decision No. 574 at 2 (1990).

We next note that the submitted documents contain information that is protected by section 552.136 of the Government Code. Section 552.136 makes bank account numbers confidential and provides, in relevant part, as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Thus, pursuant to section 552.136, you must withhold the numbers you have highlighted on the submitted copy of a personal check. As we resolve this part of your request under section 552.136, we need not address your argument for withholding this information under section 552.101.

To summarize, the majority of the information you seek to withhold under the attorney-client privilege is excepted under section 552.107(1). We have marked this information. The remainder of the submitted information is not excepted under section 552.107 or 552.111 and must be released to the requestor, with the exception of the account number you have highlighted, which must be withheld under section 552.136.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 160450

Enc. Submitted documents

c: Mr. Benjamin Paddock
515 Congress Avenue, Suite 2600
Austin, Texas 78701
(w/o enclosures)